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ABSTRACT

This policy statement from the Michigan Department of Education interprets federal provisions and the laws of the state as they may pertain to the appointment of surrogate parents for provision of special education programs and services to children with disabilities. It describes the duty of public agencies to assign an individual to act as a surrogate for a child with a disability to ensure that the rights of the child are protected when no parent can be identified. Also, a surrogate parent is needed when the public agency, after reasonable efforts, cannot discover the whereabouts of a parent or when the child is a ward of the state. Procedures for determining whether a child needs a surrogate for the parent and for assigning the surrogate are explained, as well as requirements of the surrogate, delineation of operational responsibilities, procedures for developing and maintaining the parent surrogate resource, and procedures for resolution of conflicts regarding appointment of surrogate parents. (CR)

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Michigan Department of Education
Office of Special Education and Early Intervention Services

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EC 307 951

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POLICY FOR THE APPOINTMENT OF SURROGATE PARENTS FOR SPECIAL EDUCATION SERVICES

The Policy for the Appointment of Surrogate Parents for Special Education Services (Policy) applies to public agencies engaged in the education or care of individuals covered under the Individuals with Disabilities Education Act (IDEA). The Policy is intended to interpret federal provisions and the laws of the state as they may pertain to the provision of special education programs and services where those respective state and federal jurisdictions coincide.

Policy

It is the policy of the State Board of Education (SBE) that each public agency, within the meaning of the IDEA, shall ensure that the rights of a child are protected when:

1. No parent, as defined in 34 C.F.R. §300.20, can be identified; or
2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
3. The child is a ward of the state under the laws of the state.

The duty of a public agency under the aforementioned laws includes the assignment of an individual to act as a "surrogate for the parent," and requires the development of a method for: 1) determining whether a child needs a surrogate for the parent, and 2) for assigning a surrogate for the parent to the child. The "surrogate for the parent" may represent the child in all matters relating to: 1) the identification, evaluation, and educational placement of the child, and 2) the provision of a free appropriate public education (FAPE) to the child (34 C.F.R. §300.515).

While Michigan's Revised Administrative Rules for Special Education (Rules) do not employ the term "surrogate parent," R 340.1725d does impose a duty on public agencies relative to guardianship: "Each public agency shall assure that handicapped persons under the age of 18 have a parent or legal guardian to represent their interests. If no parent or legal guardian, as defined in R 340.1701a(i) can be identified, or if the public agency, after reasonable effort, cannot discover the whereabouts of a parent or legal guardian, the public agency shall notify the court of jurisdiction and request the court to take action to assure that the person has a legal guardian." The Policy is not intended to relieve the public agency of its duty under R 340.1725d.

Definitions

The term "surrogate parent" is not expressly defined, but rather is functionally defined in the federal regulations implementing the IDEA. There is no definitional equivalent for the term in State law. The regulations use the terms "surrogate parent" and "surrogate for the parent" interchangeably (34 C.F.R. §300.515).

The term "parent," as defined in 34 C.F.R §300.20 means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 C.F.R. §300.515. The term does not include the State if the child is a ward of the State. 34 C.F.R. §300.20 provides that "parent" includes persons acting in the place of a parent, such as a grandmother or step-parent with whom the child lives, as well as persons who are legally responsible for a child's welfare. Under 34 C.F.R. §300.20, Michigan allows a foster parent to act as a parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under the

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IDEA, and has no interest that would conflict with the interests of the child.

Michigan's Rules (R 340.1701a(i)) define "parent" as "... the mother, father, or legally designated guardian of the handicapped person. 'Parent' also means the affected handicapped person when the person reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings."

"Public agencies" include local educational agencies (LEAs) and intermediate school districts (ISDs), and the Michigan Department of Education (MDE), Michigan Department of Community Mental Health (MDCMH), Family Independence Agency (FIA), and the Michigan Department of Corrections (MDOC).

Procedures

The implementing regulations for the IDEA place a twofold duty on public agencies: 1) to determine whether a child needs a surrogate for the parent and, if so, 2) to assign the surrogate. The regulations require the development of a method to carry out this duty. Those regulations and case law or official interpretations related to application of the regulations provide additional clarification about requirements. The following procedures incorporate those considerations.

The differences in organizational structures and missions of service among those public agencies included in the definition compel flexibility in how those agencies are permitted to administer their responsibility efficiently and in a manner that keeps the surrogate resource as proximal as possible to the population in need.

Public agencies, particularly State governmental agencies, may carry out this duty as a central administrative office activity, or as a decentralized responsibility assigned to specific facilities or agency subunits. LEAs or ISDs may likewise carry out this responsibility independently, in consortium, or as an ISD function.

The procedure that best suits the particular public agencies involved must be described in the ISD Plan for the Delivery of Special Education Programs and Services (Plan), or in the interagency agreement with the MDE.

To meet the federal requirements, the following characteristics apply to this Policy and any specific agency procedure.

Public agencies shall ensure that a person selected as a surrogate:

1. Is not an employee of the State educational agency (SEA), the LEA, or any other agency that is involved in the education or care of the child.

2. Has no interest that conflicts with the interest of the child he or she represents.

3. Has knowledge and skills that ensure adequate representation of the child.

4. A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child, and who meets the standards in paragraphs (c)(2)(ii) and (iii) of 34 C.F.R. §300.515.

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Delineation of Operational Responsibilities

The SBE, under its general supervisory responsibility and as the federal grant recipient, has the responsibility to assure that surrogate parents are available for any child covered under the IDEA who is in need of a surrogate for the parent.

Each public agency that has the responsibility for providing the education or care of the individual has the responsibility to develop and maintain an adequate pool of potential surrogate parents.

If the student is a ward of the State or court, the agency having the responsibility for the general care of the student should have the responsibility to appoint a surrogate conforming to the requirements of the IDEA.

If the student is a ward of the State, the identification and whereabouts of the parent, as well as the status of residual parent rights, should be known. If these factors are not known, then the agency with which wardship resides is generally thought to be the agency that is responsible for the general care of the individual. That agency should identify a surrogate parent from the pool of potential surrogate parents.

If the student is not the ward of the State or the court, the public agency responsible for the special education of the student has the responsibility to appoint a surrogate parent and to seek guardianship through the provisions of R 340.1725d. The surrogate may serve pending the outcome of the R 340.1725d procedure. The appointment may continue depending on the particulars of that outcome.

The MDE has the responsibility to resolve conflicts arising from determination of whether the need for a surrogate parent exists and/or if the proposed surrogate is free from conflict of interest.

Each ISD must assure that the ISD and the LEAs comply with this Policy. Each ISD Plan must provide a description of how the pool of surrogate parents is maintained and how appropriate training is provided to potential surrogate parents.

To be effective, the training should incorporate:

1. Laws governing the provision of special education services, including those pertaining to procedural safeguards; and

2. Characteristics of the public agency and/or district providing care or special education for the child in question; and

3. Individualized Educational Planning Team responsibilities and processes; and

4. The opportunity for the surrogate parent to become familiar with the needs of the child to whom the surrogate has been appointed.

Developing and Maintaining the Parent Surrogate Resource

When the need for a surrogate parent arises, it is usually under circumstances that are governed by time lines; i.e., when the agency receives a referral of a child who is suspected to be disabled or when the agency proposes or refuses to change the evaluation, diagnosis, placement, or FAPE for a child, change of educational status, or for any follow-up proceedings to resolve conflicts such as

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hearings or complaints involving the child. It is essential, as a condition of timely resolution of the activity and for fundamental fairness, that a surrogate be appointed in an expeditious manner. For that reason, it is important to have developed a resource to obtain adequately prepared surrogate parents.

There are various public or private associations or organizations to which a public agency may turn as a source to supply surrogate parents when the need arises. Depending on the nature and primary mission of the public agency, one source may be more appropriate than the other.

Special Education Parent Advisory Committees

ISDs are required by State law to maintain a Special Education Parent Advisory Committee (PAC) that is composed of parents of children with disabilities. Members of this PAC could serve as surrogate parents, or the PAC could assume some coordinating role in the development of the resource.

Many State agencies that have the responsibility for the residential care and the education of the child also have parent advisory committees that could serve in a capacity similar to the ISD PAC.

Other resources:

- Citizen advisory groups associated with the primary care agency
- Foster parent agencies
- Volunteer service agencies
- Parent organizations

Resolution of Conflicts Regarding Appointment of Surrogate Parents

If a question as to the need for a surrogate parent arises, or if there is a question as to the appropriateness (existence of a conflict of interest) of the particular surrogate parent appointment, the agency responsible for appointing the surrogate parent should immediately attempt to resolve the question by meeting with the individuals who gave rise to the question.

If the conflict cannot be resolved in a timely fashion to address the pending education or care matters, the agency with the responsibility to appoint the surrogate for the parent should immediately petition the MDE's Office of Special Education and Early Intervention Services (OSE/EIS) director to resolve the conflict.

The director shall assign a staff member to investigate the matter and to file a disposition report. The agencies holding the question should be responsible to clearly identify the specific areas in dispute and to provide all information necessary and requested by the OSE/EIS staff.

The OSE/EIS determination may be appealed to a court of competent jurisdiction.

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